

# Southampton to London Pipeline Project

## Deadline 4

Responses to ExA's Further Written Questions -  
Draft Development Consent Order (DCO)

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**Southampton to London Pipeline Project  
Response to the Examining Authority's Further Written Questions – Draft  
Development Consent Order (DCO)**



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# 1 Response to the Examining Authority's Further Written Questions – Draft Development Consent Order (DCO)

Table 1.1: Applicant response to Question

ExQ2	Question:	Applicant response to Question:
DCO.2.2	<p>The ExA notes the Applicant's response to ExA WQ DCO.1.3 [REP2-042]. However, the ExA remains concerned regarding the loose wording particularly "environmental mitigation measures". The ExA considers the definition as worded, could undermine the surveys and mitigation required by the Requirements in Schedule 2. For example, the "diversion or laying of services" could involve shrub clearance which in turn could undermine the LEMP. The Applicant's assertion that the</p>	<p>1.1 Various activities have been excluded from the definition of "commence" in article 2(1) to allow for preparatory and temporary works to be undertaken expeditiously and without the Applicant being constrained by the need to discharge some of the pre-commencement Requirements before it can do so. The activities carved out of the definition are precedented; for example, these activities were all (except for the installation of amphibian fencing) approved by the Secretary of State, without further moderation, in the River Humber Gas Pipeline Replacement Order 2016.</p> <p>1.2 The majority of the excluded activities within the definition comprise investigative and remedial works (see "remediation works", "environmental (including archaeological) surveys and investigation", "site or soil survey"). In many cases, these will need to be undertaken at a stage where the detailed design of the authorised development is not sufficiently advanced to enable the applicant to discharge all the Requirements in Schedule 2. For example, the content of the landscape ecological management plan (LEMP) submitted to local authorities for approval will necessarily be informed by further detailed surveys and investigation.</p> <p>1.3 The Applicant notes the Planning Inspectorate's recommendations in Advice Note 15 regarding the issue around the use of the term "commence" within DCOs. However, the Applicant's assessment has concluded that the excluded works are unlikely to have significant environmental effects. For this reason, the Applicant considers that the exclusion of these works from the definition is appropriate.</p> <p>1.4 The Applicant would also note that these works would still be controlled by the code of construction practice (CoCP) (<b>Document Reference 6.4 Appendix 16.1 (3)</b>), which the Applicant would be</p>



ExQ2	Question:	Applicant response to Question:
	<p>activities excluded from the definition of commence would not likely to have likely significant effects has also not been adequately explained or secured within the dDCO [REP3-006].</p> <p>Provide a response, and specifically explain whether the dDCO enables environmental mitigation, designed to be undertaken in accordance with the requirements in schedule 2, to be undertaken outside of commencement works and thus whether the dDCO would permit such works in the absence of management plans.</p>	<p>required to comply with under Requirement 5, as this does not use the word ‘commence’. The CoCP is one of the key mechanisms by which mitigation for the impacts of the scheme is secured.</p> <p>1.5 For example, in relation to any shrub clearance required in connection with the laying and diverting of services, the contractor would be required to “<i>retain vegetation where practicable and in accordance with, as a minimum, the vegetation retention drawings</i>” (see commitment G91). The Applicant does not therefore consider that these works would be left uncontrolled.</p> <p>1.6 These same principles apply to the inclusion of “environmental mitigation” in the list of pre-commencement activities. Those works would need to be undertaken in accordance with the environmental good practice measures which the Applicant has committed to delivering through the CoCP. For example, restrictions to working due to seasonal constraints would apply to those works (see commitments G34 and G35) and any vegetation would need to be retained where practicable (see commitment G91), including vegetation at river banks (see commitment G131).</p> <p>1.7 The Applicant therefore considers that the ExA can be satisfied that there are effective controls over these excluded works.</p>



ExQ2	Question:	Applicant response to Question:
<p><b>DCO.2.3</b></p>	<p><b>In ExA WQ DCO.1.8 [PD-008], the ExA expressed concerns that Article 6(2) allowed a considerable level of flexibility in changes within the Limits of Deviation and sought a justification for its inclusion in the dDCO [AS-059]. The Applicant responded [REP2-042] that the provision is justified, amongst other things, to allow for unexpected ground conditions encountered during construction, that adequate controls on this process rest with the Secretary of State (SoS), and that it has been allowed in other DCOs.</b></p> <p><b>Notwithstanding, Rushmoor Borough Council considers in its</b></p>	<p>1.1 In response to i), the Applicant would note that Article 6(2) has been amended, in the revised draft DCO submitted at Deadline 3 (<a href="#">REP3-006</a>), such that the power to deviate beyond the limits of deviation described in Article 6(1) now only applies as regards the vertical limits of deviation.</p> <p>1.2 As the Applicant has already made clear, the provision would only be engaged in very limited circumstances where a localised issue arises, but its inclusion in the DCO is necessary (as explained in the Applicant's response to written question DCO.1.8) for those circumstances in which it is impracticable, unsafe or simply not feasible to comply with the vertical limits of deviation specified in Article 6(1).</p> <p>1.3 Furthermore, any changes permitted under Article 6(2) already contain a process for permitting a change to the limits of deviation by the SoS. The formulation of Article 6(2) is itself the process of approval for a change made under it, whereby the Applicant would be required to evidence that a deviation in excess of the limits in Article 6(1) would not give rise to any materially new or materially different environmental effects from those reported in the Environmental Statement (ES) and this would be subject to certification by the Secretary of State in consultation with the relevant planning authority. Rushmoor Borough Council would therefore be consulted on any vertical deviation beyond the limits in Article 6(1) in relation to land under its jurisdiction as planning authority.</p> <p>1.4 In response to question ii), the Applicant does not therefore consider that an amendment to the draft DCO is required.</p>



ExQ2	Question:	Applicant response to Question:
	<p>response at D3 [REP3-041], this Article would allow changes to the DCO without scrutiny and that the provision is unnecessary and unreasonable.</p> <p>i) Respond to Rushmoor Borough Council's comments. In particular, irrespective of any precedent, provide justification for adopting an approach to which allows for a change to the examined limits of deviation, other than by way of an application under schedule 6 PA 2008, without any specific process in place for this. Or</p> <p>ii) Amend the dDCO by inserting a process for permitting a change to</p>	



ExQ2	Question:	Applicant response to Question:
	<p>the limits of deviation by the SoS.</p>	
<p><b>DCO.2.4</b></p>	<p><b>i) Explain the circumstances where the undertaker may need to permanently alter any street whether in the order limits or not.</b></p> <p><b>ii) Explain why the undertaker would need to alter the width of any kerb mentioned in (a) and (b).</b></p>	<p>1.1 There are no planned permanent alterations to any streets in the current alignment. However, as the Applicant noted at the issue specific hearing on the DCO held on 27 November 2019, the power to permanently alter streets under article 9(2) may be used where an alteration made to a street was relatively minor in nature and it would cause more disruption to the local community to reinstate the street to its former condition. In those circumstances, article 9(2), with the agreement of the street authority, would prevent further unnecessary disruption.</p> <p>1.2 An example of this may be where street furniture such as a bollard is removed from the street as part of the pipeline replacement works, which may then need to be relocated if it is not possible to reinstate it in its original location.</p> <p>1.3 The Applicant would reiterate that the power is well precedented and is subject to the consent of the street authority. The Applicant would also note that the deemed consent period in Article 9(5) has been amended from 28 to 42 days in the revised draft DCO submitted at Deadline 3 (<a href="#">REP3-006</a>).</p>
<p><b>DCO.2.5</b></p>	<p><b>Explain the need for the following powers without the consent of the Street Authority:</b></p> <p><b>i) In bullet (f) demolish, remove, replace and relocate any street furniture within the street. Explain the need</b></p>	<p>1.1 The Applicant would note that the powers under Article 10(1) are only exercisable without the consent of the street authority in respect of the streets specified in Schedule 4 of the DCO.</p> <p>1.2 In response to i), this power may be required where, for example, a bollard needs to be removed from a street so that the replacement pipeline works can be undertaken. In those circumstances, it may be the case that the removal of the bollard can be undertaken without demolishing it, so that the same bollard can be relocated on completion of the works. In other circumstances, demolition may be necessary, which may then require the replacement of the bollard with a new one.</p>



ExQ2	Question:	Applicant response to Question:
	<p>for all four powers affecting street furniture.</p> <p>ii) In bullet (g) execute any works to provide or improve sight lines. Explain the circumstances where this would be necessary and also what may be involved in terms of street furniture and landscaping?</p> <p>iii) In bullet (h) execute and maintain any works to provide hard and soft landscaping. Explain where this may be required, where the specification of any such landscaping would be secured and where the period of maintenance for any such works is defined and secured</p>	<p>1.3 Further, at Ashford station approach, street furniture (bollards, litter bin, road signs) will need to be removed and / or relocated during construction works to enable the kerb to be narrowed so that two lanes of traffic can use the station approach and thereby maintain access to Ashford Station and its carpark and for construction traffic. During reinstatement, the street furniture will be replaced with existing or replaced with new.</p> <p>1.4 In a few locations, bus stops will need to be suspended and temporarily relocated, locations include Beaconhill Road.</p> <p>1.5 In response to ii), street furniture will need to be removed in some locations in order to improve sight lines for construction traffic during construction. For example, in constructing bellmouth junctions for access from the main highway to a haul road it may be necessary to relocate, with the highways authority's agreement, road signs or other street furniture in order to improve sight lines.</p> <p>1.6 In response to iii), where vegetation or landscaping is removed on land of which temporary possession is taken in connection with the pipeline works, the vegetation and landscaping will be reinstated as per requirement 8 (Hedgerows and trees) and requirement 12 (LEMP) of the DCO.</p> <p>1.7 In response to iv), all road markings affected by construction works will need be reinstated and this may include markings such as re-lining (e.g. centrelines, yellow lines) as well as junction markings (e.g. give way, keep clear etc.).</p> <p>1.8 In response to v), signage may need to be removed in order to access works, for example to provide sufficient space for construction works and (as noted in response to part ii)) to improve the line of sight for access to haul roads. All permanent signage temporarily removed during the construction of the pipeline would be replaced and its location will be agreed with the Highways Authorities if the sign is to be moved from its original position.</p>





ExQ2	Question:	Applicant response to Question:
	<p>iv) In bullet (i) carry our re-lining and placement of road markings. Explain the circumstances where placement of road marking would be required over and above re- lining.</p> <p>v) In bullet (j) remove and install temporary and permanent signage. Explain the circumstances where permanent signage would be removed and installed in a street.</p>	
DCO.2.6	<p>In the D3 response [REP3-010] paragraph 2.35 it was confirmed that the Applicant is in discussion with the both Surrey and Hampshire County Councils with respect to the implications for Article</p>	<p>1.1 The Applicant has now reached an agreement with both Surrey and Hampshire County Councils on new wording for the draft DCO to deal with the interface between the Order powers and the Surrey and Hampshire permit schemes. This wording is included in a modified article 35 (Application, exclusion and modification of legislative provisions) of the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1 (5)</b>).</p> <p>1.2 The relevant provisions of article 35 are now as follows (the existing paragraphs follow these):</p>



ExQ2	Question:	Applicant response to Question:
	<p><b>11 and potentially other Articles in Part 3 of the South East and Hampshire Permit Schemes.</b></p> <p><b>Provide an update and any outstanding concerns.</b></p> <p><b>N.B - The ExA would hope that a joint response could be provided on an agreed approach</b></p>	<p><b><i>Application, exclusion and modification of legislative provisions</i></b></p> <p><i>35 (1) Subject to article 11 and paragraphs (2), (3) and (4) of this article, the following enactments apply (insofar as relevant) to the construction and maintenance of the authorised development</i></p> <p><i>(a) the Surrey County Council Permit Scheme in respect of streets for which Surrey County Council is the highway authority; and</i></p> <p><i>(b) the Hampshire County Council Permit Scheme in respect of streets for which Hampshire County Council is the highways authority.</i></p> <p><i>(2) For the purposes of the enactments referred to in paragraph (1)—</i></p> <p><i>(a) conditions relating to moratoria may not be imposed on any permit granted pursuant to those enactments;</i></p> <p><i>(b) a permit may not be refused on any grounds relating to the imposition of moratoria; and</i></p> <p><i>(c) a permit may not be granted subject to conditions relating to the matters specified in regulation 10(2)(a), (b), (c) and (f) of the Traffic Management Permit Scheme (England) Regulations 2007 (“the 2007 Regulations”) where compliance with those conditions would constitute a breach of this Order or where the undertaker is unable to comply with those conditions pursuant to the powers conferred by this Order.</i></p> <p><i>(3) References to moratoria in paragraph (2) means restrictions imposed under section 58 (restrictions on works following substantial road works) or section 58A (restrictions on works following substantial street works) of the 1991 Act as modified by regulation 37 of the 2007 Regulations.</i></p> <p><i>(4) Without limiting any other appeal mechanism available to the undertaker, Part 2 of Schedule 2 of this Order shall also apply to any decision to refuse to grant a permit or to any decision to grant a permit subject to conditions pursuant to the enactments referred to in paragraph (1).</i></p> <p>1.3 Associated amendments have been made to Part 3 of the draft DCO to make clear that the powers conferred by relevant articles do not apply where the Applicant is operating pursuant to a permit</p>



ExQ2	Question:	Applicant response to Question:
		<p>granted by the County Councils pursuant to either of the permit schemes. These amendments resolve any potential ambiguity regarding the interface between the permit schemes and the powers in Part 3 of the draft DCO.</p> <p>1.4 The proposed amendments to article 35 have been shared with the County Councils in advance of Deadline 4 and the Applicant understands that the Councils are content with them. There are, therefore, no outstanding concerns regarding the application of the permit schemes in the context of this application, at this stage.</p>
DCO.2.7	<p><b>The title of this Article now includes alteration, diversion or restriction. This now brings the purpose of this Article even closer to Article 15 Traffic Regulation in that they are both seeking to control or regulate the use of a street.</b></p> <p><b>Irrespective of any precedent, explain whether the dDCO would be much clearer and more concise if these two articles were combined to provide a</b></p>	<p>1.1 The Applicant maintains that these powers justify separate treatment under article 12 (temporary stopping up, alteration, diversion or restriction of streets and public rights of way) and article 15 (traffic regulation).</p> <p>1.2 First, the Applicant would note that the title of article 12 was amended at Deadline 3 in the examination to better reflect the powers conferred by that article (<a href="#">REP3-006</a>) bring the purpose of this article substantively any closer to article 15.</p> <p>1.3 Second, there is a legal distinction to be made between restricting the use of a street on the one hand and regulating the use of a street on the other. This distinction is made clear in s. 2 of the Road Traffic Regulation Act 1984, which provides that “<i>a traffic regulation order may make any provision prohibiting, restricting or regulating the use of a road ...</i>” (<i>emphasis added</i>). Article 12 is therefore seeking to restrict access to or along streets in specific circumstances; article 15 is seeking broadly to regulate or control the use of streets. The Applicant does not consider that article 15 could be relied upon in order to seek to restrict access to a street (article 15(1)(e) only allows the Applicant to “permit” or “prohibit” vehicular access to a street.</p>



ExQ2	Question:	Applicant response to Question:
	<p><b>new article relating to Temporary Closures and Other Traffic Regulations.</b></p>	<p>1.4 Third, it should be noted that article 12 contains powers to “stop up”, “alter” and “divert” streets and public rights of way. These matters are entirely distinct from the traffic regulation making power in article 15.</p> <p>1.5 Finally, there are clear differences between the circumstances in which each power may be applied: article 12 only relates to streets and public rights of way shown on the access &amp; rights of way plan or within the Order limits whereas article 15 is not subject to that restriction; each article is subject to separate consultation and approval processes.</p> <p>1.6 For these reasons, and whilst acknowledging that these articles are related, the Applicant considers that it is appropriate that they should continue to be treated separately in the draft DCO (<b>Document Reference 3.1 (5)</b>).</p>
<p><b>DCO.2.8</b></p>	<p><b>Comment on Spelthorne Borough Council’s suggestion [REP3-045] that this Article would be unnecessary given the means of access are identified in the Order plans and subsequently should be deleted or made subject to approval provisions that would allow consideration of the effects of any additional site accesses.</b></p>	<p>1.1 The Applicant assumes that the concerns raised by Spelthorne Borough Council relate to the version of the draft DCO submitted prior to Deadline 2 in the examination timetable. The version of the draft DCO submitted at Deadline 2 (<a href="#">REP2-003</a>) included modifications to article 14 which now make the forming and laying out of permanent or temporary means of access, or improvements to existing means of access, subject to the consent of the street authority (see article 14(1) of the draft DCO (<b>Document Reference 3.1 (5)</b>). Article 14(2) clarifies that the consent of the street authority is not required for the formulation, laying out or improvement of a new or existing means of access as described in Schedule 1. This is appropriate, since there is an opportunity during this examination for interested parties to comment upon those works powers. A similar provision appears in article 13(2) of the Northampton Gateway Rail Freight Interchange Order 2019.</p> <p>1.2 The Applicant therefore considers that the modifications made to the draft DCO submitted at Deadline 2 address the concerns noted by Spelthorne Borough Council in its Deadline 3 submissions.</p>



ExQ2	Question:	Applicant response to Question:
		<p>1.3 For completeness, the Applicant would note that a further amendment has now been made to article 14 in the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1 (5)</b>) to clarify that the powers conferred upon the Applicant by this article do <u>not</u> apply where it is operating under a permit granted pursuant to the Hampshire County Council permit scheme or the Surrey County Council permit Scheme, as the case may be. The purpose of this amendment is to resolve any potential ambiguity regarding the interface between article 14 and the permit schemes.</p>
<p><b>DCO.2.9</b></p>	<p><b>This Article limits the powers under this Article for the purposes of, or in connection with, the construction of the authorised development. Explain why other articles in Part 3 are not similarly restricted to the construction of the authorised development.</b></p>	<p>1.1 Article 15 (traffic regulation) is a power to regulate traffic with the consent of the traffic authority. Any prohibitions, restrictions or other provision made in relation to traffic under article 15 have effect as if they were a traffic regulation order (TRO) under the Road Traffic Regulation Act 1984 (the 1984 Act) (see article 15(4) of the draft DCO (<b>Document Reference 3.1 (5)</b>).</p> <p>1.2 The power to make TROs is ordinarily one which is exercised by the traffic authority (see s. 1 of the Road Traffic Regulation Act 1984). Subject to appropriate controls, article 15 therefore effectively empowers the Applicant to act as though it were the traffic authority in regulating traffic <i>for the purposes of, or in connection with, the construction of the authorised development</i>. This contrasts with the other provisions in Part 3, which relate to matters which the Applicant would <i>itself</i> be authorised to do, subject to an application being made to and approved by the street authority.</p> <p>1.3 The Applicant does not consider that it would be appropriate for this power to apply indefinitely beyond construction of the authorised development. The Applicant considers that this would encroach upon the function of the traffic authority. The provision as drafted is justified, since it will be necessary to regulate traffic during construction, particularly when working in streets to construct the pipe, and enables those regulations to be imposed in a consistent and expeditious manner under a single process defined by the DCO. The provision is also proportionate, since it is limited in duration to the construction of the authorised development.</p>



ExQ2	Question:	Applicant response to Question:
		<p>1.4 Once completed, it is appropriate that the existing regime for imposing TROs should apply. This would require the Applicant to make an application to the traffic authority for a TRO.</p>
<p><b>DCO.2.10</b></p>	<p><b>Article 29(9) of the dDCO which existed prior the version submitted at D3 [REP2-004] has been removed. The Applicant's explanation of the change [REP3-011] states that, where in other DCOs an article of this nature serves to clarify powers of new rights and temporary possessions, in this case the "yellow land" only seeks temporary possession powers and is not subject to the compulsory acquisition of rights and for that reason, the Applicant considers that Article 29(9) was not in fact applicable in this case.</b></p>	<p>1.1 The Applicant does not consider that this is strictly necessary, since the power to compulsory acquire interests and rights in land under articles 20 and 22 is limited to the Order land described in the book of reference and shown on the land plans. No powers of compulsory acquisition are sought in respect of the "yellow land", thus articles 20 and 22 could not be used to override article 29 and permit the compulsory acquisition of land (or rights in land) specified in Schedule 7.</p> <p>1.2 That notwithstanding, the Applicant is content to make the change requested and this is now included in the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1 (5)</b>).</p>



ExQ2	Question:	Applicant response to Question:
	<p>While the ExA understand the reason for its removal, the ExA is concerned that Articles 20(1) and 22(1) of the dDCO [REP3-006] as worded could essentially override Article 29 and permit CA of land in Schedule 7. The ExA considers that Article 29 should make clear that “yellow land” is not subject to compulsory acquisition.</p> <p>Amend the dDCO and reinsert the following after Article 29(8):</p> <p>“(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i)”.</p>	



ExQ2	Question:	Applicant response to Question:
DCO.2.11	<p><b>In ExA WQ DCO.1.24 [PD-008], the ExA requested an update of consents necessary to permit a provision to disapply the provisions under the Water Resources Act 1991, the Environmental Permitting Regulations 2016 and the local legislation and byelaws without the express consent of the relevant consenting body. The Applicant responded [REP2-042] stating that it needs to disapply Schedule 25 (byelaw-making powers of the Authority) to the Water Resources Act 1991, Regulation 12 of the 2016 Regulations (requirement for an environmental permit) in respect of a flood risk</b></p>	<p>1.1 In answer to (i), the Applicant is continuing discussions with the Environment Agency with a view to their agreeing that the consents concerned can be disapplied by the DCO, i.e. effectively brought within the DCO.</p> <p>1.2 In answer to (ii), the Applicant notes the deadline that the ExA has set and will strive to reach agreement.</p>





ExQ2	Question:	Applicant response to Question:
	<p><b>activity and Section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991. The Applicant stated that matters are subject to ongoing discussions between the Applicant and the relevant consenting bodies.</b></p> <p><b>i) Provide an update on the progress of these discussions.</b></p> <p><b>ii) If no consent is forthcoming before Wednesday 1 April 2020, remove the Article for D7, 2 April 2020.</b></p>	



ExQ2	Question:	Applicant response to Question:
DCO.2.12	<p>In ExA WQ DCO.1.26 [PD-008], the ExA requested information as to the permitted development rights in the Town and Country Planning Act 1990 that would be made available to the Proposed Development under this provision. In its response [REP2-042], the Applicant stated the rights applied to Parts 8, 13 and 15 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, but that the provision does not make new permitted development rights available but ensures that statutory undertakers' existing rights continue to be available to them.</p>	<p>1.1 Whilst permitted development rights are capable of existing under other legislation, namely the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) article 38 of the draft DCO is necessary to ensure that they will in fact be available. The Applicant's response to written question DCO.1.26 (<a href="#">REP2-042</a>) was not intended to imply that article 38 performs no substantive function in and of itself. To be clear, without article 38, there is a real risk that those permitted development rights would not be available.</p> <p>1.2 The legal principles can be summarised as follows.</p> <p>1.3 Land is not treated as "operational land" automatically. Indeed, s. 264(1) confirms in terms that, unless one of the exceptions in subsections (3) or (4) applies, land is to be treated as not being operational land, in circumstances where an interest in land is held by statutory undertakers for the purpose of carrying on their undertaking and (a) the interest was acquired by them on or after 6th December 1968; or (b) it was held by them immediately before that date but the circumstances were then such that the land did not fall to be treated as operational land for the purposes of the 1962 Act.</p> <p>1.4 In principle, therefore, land in respect of which interests may be acquired by statutory undertaker to accommodate diverted / relocated apparatus as a result of works carried out in connection with this scheme would not be treated as operational land (see s. 264(2)), since those interests would necessarily have been acquired after 6th December 1968 (i.e. caught by (a) above).</p> <p>1.5 As noted, there are exceptions to the default position in ss. 264(1) and (2) in subsections (3) and (4). Subsection (3) is the relevant provision for the purposes of this application. It says that:</p> <p>(3) "Land falls within this section if–</p> <p style="padding-left: 40px;">(a) there is, or at some time has been, in force with respect to it a <u>specific planning permission</u> for its development; and</p>



ExQ2	Question:	Applicant response to Question:
	<p><b>Explain therefore the need for this Article if such permitted development rights already exist in other legislation.</b></p>	<p><i>(b) that development, if carried out, would involve or have involved its use for the purpose of carrying on of the statutory undertakers' undertaking."</i></p> <p>1.6 Subsection (5) confirms which forms of planning permission are to be treated as a "specific planning permission" for the purpose of subsection (3)(a). Notably, development consent conferred by an Order under the 2008 Act does not fall within the ambit of that subsection.</p> <p>1.7 Against that backdrop, article 38 clarifies that "<i>development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990</i>".</p> <p>1.8 The effect of this drafting is therefore that land in respect of which interests may be acquired by statutory undertakers to accommodate diverted / relocated apparatus as a result of works carried out in connection with this scheme are capable of constituting "operational land" for the purposes of the 1990 Act (subject also to the condition in subsection 3(b) being met, which the Applicant considers it would be).</p> <p>1.9 As noted, this would not otherwise be the case, since there is no provision in s. 264(5) that development consent conferred by an Order under the 2008 Act to be treated as a specific planning permission.</p> <p>1.10 In turn, therefore, this means that article 38 ensures that the permitted development rights which apply in respect of "operational land" under Parts 8, 13 and 15 of Schedule 2 of the GPDO are capable of applying to land in respect of which statutory undertakers' apparatus and equipment may be relocated / diverted under the powers of this Order.</p>



ExQ2	Question:	Applicant response to Question:
DCO.2.14	<p>The ExA is concerned that the Requirements as worded now only requires matters to be “based upon” its outline versions as opposed to be “substantially in accordance” or “in accordance”. No definition exists in the dDCO [REP3-006], and the ExA is not aware of any previous legal definition or meaning in any other DCOs of the terminology “based upon”.</p> <p><b>For the Applicant:</b></p> <p>i) Explain the difference in terminology and its implications.</p> <p>ii) Justify the looser term. Or</p>	<p>1.1 In response to sub-question (i), the Applicant acknowledges the Examining Authority’s concerns and has therefore modified Requirements 6, 7, 9, 12 and 15 in the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1 (5)</b>) so that the plan submitted for approval under those Requirements must now be in accordance with the outline plan.</p> <p>1.2 To be clear:</p> <p>Requirement 6 (Construction Environmental Management Plan) now provides:</p> <p><i>‘6.—(1) No stage of the authorised development must commence until a CEMP for that stage, in accordance with the outline CEMP, has been submitted to and approved by the relevant planning authority following consultation with the Lead Local Flood Authority and/or the Environment Agency as regards any water mitigation and management measures relevant to that stage.</i></p> <p><i>(2) The construction of each stage of the authorised development must be carried out in accordance with the approved CEMP for that stage.’</i></p> <p>Requirement 7 (construction traffic) now provides:</p> <p><i>‘7.—(1) Save in respect of matters approved in accordance with article 12 (temporary stopping up of streets and temporary rights of way) no stage of the authorised development must commence until a CTMP for that stage, in accordance with the outline CTMP, has been submitted to and approved by the relevant highway authority following consultation with the relevant planning authority.</i></p> <p><i>(2) The CTMP for each stage must be implemented as approved.’</i></p> <p>Requirement 9 (surface and foul water drainage) now provides:</p>



ExQ2	Question:	Applicant response to Question:
	<p><b>iii) Alternatively, restore all relevant Requirement to “in accordance”.</b></p> <p><b>For Relevant Planning Authorities:</b></p> <p><b>iv) Comment on the above.</b></p>	<p><i>‘9.—(1) No stage of the authorised development must commence until, for that stage, a surface and foul water drainage plan for permanent works relevant to that stage, in accordance with the outline SFWDP, has been submitted to and approved by the sewerage and/or drainage authority or, where applicable, the Environment Agency and/or the Lead Local Flood Authority.</i></p> <p><i>(2) The surface water drainage system for each stage must be constructed in accordance with the approved details.</i></p> <p><i>(3) No discharge of water under article 17 (discharge of water) must be made until details of the location and rate of discharge have been submitted to and approved in writing by the relevant sewerage and/or drainage authority or, where applicable, the Environment Agency and/or the Lead Local Flood Authority.’</i></p> <p>Requirement 12 (Landscape and Ecological Management Plan) now provides:</p> <p><i>‘12.—(1) Subject to sub-paragraph (3), no stage of the authorised development must commence until a LEMP, for that stage, in accordance with the outline LEMP and the SSSI working plans, has been submitted to and approved by the relevant planning authority.</i></p> <p><i>(2) The LEMP must include an implementation timetable and must be carried out as approved.</i></p> <p><i>(3) Sub-paragraph (1) only applies to those stages of the authorised development in respect of which any landscape and ecological management measures are to be implemented by the undertaker, as identified in the Environmental Statement.’</i></p> <p>Requirement 15 (community engagement plan)</p>



ExQ2	Question:	Applicant response to Question:
		<p><i>‘15.—(1) No stage of the authorised development must commence until a CEP for that stage, in accordance with the outline CEP, has been submitted to and approved by the relevant planning authority.</i></p> <p><i>(2) The CEP for each stage must be implemented as approved.’</i></p> <p>1.3 In response to (ii) and (iii), the Applicant has incorporated alternative drafting for each of these Requirements in response to the Examining Authority's concerns, so the previous wording is no longer relied upon.</p>
<p><b>DCO.2.15</b></p>	<p><b>The ExA has expressed concerns regarding the practicalities of this Requirement, specifically how the Applicant intends to deal with each authority and ensure a consistent approach. In the D3 response [REP3-010], the Applicant states that the current drafting of this Requirement reflects that there has been limited engagement with contractors and as such the detail as to how the</b></p>	<p>1.1 In response to (i), the Applicant does not envisage that the level of engagement with contractors which would be required in order to provide definitive statements about the way in which construction of the project would be divided under Requirement 3 in practice will be achievable within the timeframes of this examination. Contractor engagement is necessarily influenced by the stage of development of the project. That is to say that, in circumstances where consent for this project has not been granted and is still subject to examination, there are necessarily limitations upon the extent to which the Applicant is able meaningfully to engage with contractors regarding detailed matters which speak to the implementation of the project.</p> <p>1.2 The Applicant notes that it is not uncommon for consent to be granted by the Secretary of State subject to a requirement for the production of a staging / phasing plan which is not before the examination (see for example project wide Requirement 3 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014). The Applicant considers that the Secretary of State can be satisfied that Requirement 3 provides a mechanism by which the staging / phasing of the construction of the project would be appropriately defined so as to provide certainty about how it would be implemented in practice.</p> <p>1.3 It should also be noted that the primary legal function performed by Requirement 3 is to define the stages of the project in respect of which the plans, schemes and strategies required to be</p>



ExQ2	Question:	Applicant response to Question:
	<p><b>project would be built out has not been worked up.</b></p> <p><b>For the Applicant:</b></p> <p><b>i) Explain whether further details will be made available to the Examination before it closes.</b></p> <p><b>ii) Amend the Requirement to ensure that development cannot commence until the scheme setting out the stages has been submitted to all relevant planning authorities.</b></p> <p><b>For Relevant Planning Authorities:</b></p> <p><b>iii) Given the concerns raised at the Issue Specific Hearing on the dDCO held on Wednesday 27 November 2019 [EV-</b></p>	<p>approved pursuant to the other Requirements in Schedule 2 must be submitted for approval. The Examining Authority will be aware that the Applicant incorporated a new Requirement 20 in the revised draft DCO submitted at Deadline 3 (<a href="#">REP3-006</a>) which requires the Applicant to establish and maintain in an electronic form suitable for public inspection a register of Requirements. The Applicant considers that this Requirement will provide a high degree of certainty about the current status of each Requirement for each stage of the authorised development (see paragraph (2) of Requirement 20 in particular).</p> <p>1.4 In response to (ii), the Applicant is content to agree this wording and has included it in Requirement 3 in the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1 (5)</b>). However, the Applicant's position remains that any provision requiring the approval of this written scheme by relevant planning authorities would be inappropriate and strongly resisted by the Applicant, for the reasons set out in its written summary of oral submissions put at the Issue Specific Hearing on the draft DCO on 27 November 2019 (<b>Application Document 8.17</b>).</p>



ExQ2	Question:	Applicant response to Question:
	<p>006b] and by Spelthorne Borough Council in its submission at D3 [REP3-045] regarding the wording of this Requirement, provide an alternative form of wording which would be acceptable.</p> <p>N.B – The ExA would hope that a joint response could be provided on an agreed approach</p>	
DCO.2.16	<p>Notwithstanding the Applicant's response to ExA WQ DCO.1.32 [REP2-042], the ExA remains concerned by the wording of this Requirement.</p> <p>Chapter 16 of the ES [APP-056] confirms that the purpose of the CoCP is to provide effective planning, management</p>	<p>1.1 The Applicant notes the Examining Authority's concern and has made a modification to Requirement 5 in the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1(5)</b>) in response to it.</p> <p>1.2 Requirement 5 (Code of Construction Practice) therefore now reads as follows:  <i>'The authorised development must be undertaken in accordance with the Code of Construction Practice, or with such changes to that document as agreed by the relevant planning authority, provided that any such changes must be–</i>  <i>(a) necessary or desirable to reflect a change or update in legislation, guidance or good practice;</i>  <i>or</i>  <i>(b) confined to a specific location along the route of the authorised development.</i></p>





ExQ2	Question:	Applicant response to Question:
	<p><b>and control during construction with the aim of controlling potential impacts on people, businesses and the natural and historic environment, and that it would be fixed by the end of the process.</b></p> <p><b>However, the tailpiece at the end of the Requirement 5, which states “or with such changes to that document as agreed by the relevant planning authority”, potentially undermines this fixed process, and has the potential to extend beyond the Applicant’s stated intention to maintain flexibility for the possibility of changes in legislation or guidance to reflect best</b></p>	<p>1.3 The Applicant considers that this approach strikes an appropriate balance between providing certainty that the code of construction practice would be implemented as approved, but not so as to constrain the Applicant’s ability to propose limited changes to that document, subject to prior approval, which ensure that it is capable of evolving with changes in legislation, guidance and good practice, or to providing a more appropriate solution in a specific location along the route of the proposed development.</p>



ExQ2	Question:	Applicant response to Question:
	<p>practice or a change to a specific LPA.</p> <p>The ExA requests that either that tailpiece is removed; or that it is reworded to be limited only to the circumstances described in the Applicant's response to ExA WQ DCO.1.32 [REP2-042].</p>	
DCO.2.18	<p>Signpost or provide an explanation as to the changes to Requirement 6 in the dDCO [REP3-006] specifically the deletion of the reports to accompany the CEMP when submitted to relevant planning authorities.</p>	<p>1.1 The Applicant's explanation as to the changes to Requirement 6 in the draft DCO submitted at Deadline 3 (<a href="#">REP3-006</a>) is set out at paragraphs 19 to 22 (inclusive) of the draft DCO Explanation of Changes at Deadline 3 (<b>Application Document 8.28</b>).</p> <p>1.2 In particular, paragraph 20 confirms that the list of details and management plans and measures previously set out in paragraph (2) of Requirement 6 would be set out in the outline CEMP, which is now being provided at Deadline 4 (<b>Document Reference 8.51</b>). The Applicant has modified Requirement 6 so that any CEMP submitted for approval must be "in accordance with the outline CEMP", in the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1(5)</b>). The outline CEMP provides further information regarding the management plans and measures previously listed at Requirement 6(2)(d) of the draft DCO prior to Deadline 3 (<a href="#">REP3-006</a>). The requirement to produce and seek approval of these plans and measures is therefore still secured by the draft DCO, albeit in a modified form.</p>



ExQ2	Question:	Applicant response to Question:
DCO.2.20	<p>In their respective LIRs, Spelthorne Borough Council [REP1-021], Runnymede Borough Council [REP1-017] and Surrey Heath Borough Council [REP1-023] Local Authorities requested an additional wording to Requirement 7 of the dDCO [REP3-006] requiring a CTMP for each stage of works, and to cover a list of 19 areas including development phasing and highway condition survey.</p> <p>The Applicant responded at D3 [REP3-010] stating that it will be providing an Outline CTMP at D4. The Local Authorities in their D3 responses [REP3-044] appear to consider the matter remains</p>	<p>1.1 The Applicant has provided an outline Construction Traffic Management Plan (CTMP) at Deadline 4 (<b>Document Reference 8.49</b>). The drafting of the outline CTMP was informed by suggestions made by Interested Parties, including those cited here. The Applicant notes that the use of the permit schemes operated by Hampshire and Surrey County Council, as requested by these highway authorities and accepted by the Applicant, will to a certain extent override some of the provisions contained in the outline CTMP.</p> <p>1.2 The Applicant considers that, given the level of detail now included in the outline CTMP, and the fact that any final CTMP submitted for approval must be in accordance with the outline CTMP, the current proposed drafting of Requirement 7 is appropriate and ensures that the Requirement does not become unworkable or unduly complex.</p>



ExQ2	Question:	Applicant response to Question:
	<p>unresolved. Update the ExA as to the progress and content contained within the Outline CTMP and if necessary, update Requirement 7 of the dDCO accordingly.</p>	
<p><b>DCO.2.21</b></p>		<p>1.1 The Applicant is content to agree to the insertion of the words “<i>retention and</i>” before “<i>removal</i>” in Requirement 8(1)(a) and this change has been made to the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1(5)</b>). The reference to “<i>the code of construction practice</i>” in Requirement 8(1)(a) has also been substituted for “<i>the LEMP</i>”. It should be noted, however, that the Applicant has refined its approach to the drafting of this Requirement, as set out in response to written question LV.2.8 (<b>Document Reference 8.40</b>). Requirement 8(1)(a), The Applicant will provide plans notified to the relevant planning authorities detailing the retention and removal of vegetation for the purposes of Requirement 8(1)(a), in accordance with the principles of vegetation retention and removal as set out in the Outline LEMP submitted at Deadline 4 (<b>Document Reference 8.50</b>).</p>



ExQ2	Question:	Applicant response to Question:
DCO.2.22	<p>i) Indicate when an updated archaeological mitigation strategy [REP2-007] is likely to be submitted into the Examination.</p> <p>ii) Respond to Surrey County Council's D3 response [REP3-046] regarding its view on a re-wording of this Requirement.</p> <p>You may wish to combine the response to this question with HE.2.1</p>	<p>1.1 The updated Archaeological Mitigation Strategy (<a href="#">REP2-007</a>) has been submitted into the examination at Deadline 4 (<b>Document Reference 6.4 (3)</b>) .</p> <p>1.2 Requirement 11 (5) of the draft DCO states “ <i>(5) Any archaeological works carried out under the scheme must be carried out by a suitably qualified person or body and approved by the relevant planning authority.</i></p> <p>1.3 Surrey County Council have suggested that this is reworded to say “<i>Any archaeological works carried out under the scheme must be carried out by a suitably qualified and Registered person or body and approved by the relevant planning authority</i>”</p> <p>1.4 Re-wording requires the suitably qualified person or body to be Registered. While not explicit in the re-wording this is taken to mean Registered as an archaeological organisation with the Chartered Institute for Archaeology. This was one of the requirements used to select the archaeological contractors, and such a change would be acceptable.</p>
DCO.2.23	<p>The SDNPA in its D3 response [REP3-061] states that Requirement 12 of the dDCO [REP3-006] should be re-worded so that it ensures the submitted LEMP would address a number of areas.</p>	<p>1.1 The Applicant is grateful for SDNPA's suggestions in relation to the contents of the Outline LEMP and has had regard to these in developing the document. The general structure of the Outline LEMP submitted at Deadline 4 (<b>Document Reference 8.50</b>) has been discussed with SDNPA who will provide further comments following their review after Deadline 4. Please see the Applicant's response to FWQ GQ.2.2 for details on the structure of the Outline LEMP.</p> <p>1.2 The Applicant has amended Requirement 12 of the draft DCO submitted at Deadline 4 (<b>Document Reference 3.1 (5)</b>) to require that the LEMP must be in accordance with the outline LEMP.</p>



ExQ2	Question:	Applicant response to Question:						
	<p>Provide a response.</p>							
<p><b>DCO.2.24</b></p>	<p><b>For the Relevant Planning Authorities:</b></p> <p>The wording of this Requirement has been amended in the dDCO [REP3-006] in light of the discussions at the ISH on the dDCO held on Wednesday 27 November 2019 [EV-006b]. Respond as to the adequacy of this wording.</p> <p><b>For the Applicant:</b></p> <p>Whilst the proposed hours of work have been</p>	<p>1.1 In response to (i), the Applicant can confirm that deliveries will occur as part of the start-up/shut-down activities. Commitment G109 address the measures required, within the Noise and Vibration Management Plan which is secured in the Outline CEMP (<b>Document Reference 8.50</b>).</p> <p>1.2 In response to (ii), the Applicant has made a number of commitments within the Outline Noise and Vibration Management Plan which are secured as part of the Outline CEMP:</p> <table border="1" data-bbox="696 970 2085 1378"> <thead> <tr> <th data-bbox="696 970 880 1018">Reference</th> <th data-bbox="880 970 2085 1018">Commitment</th> </tr> </thead> <tbody> <tr> <td data-bbox="696 1018 880 1139">G102</td> <td data-bbox="880 1018 2085 1139">Noise and vibration would be managed by processes and measures laid out in the CEMP. This would include to adopt BPM for the control of noise and vibration across the project.</td> </tr> <tr> <td data-bbox="696 1139 880 1378">G100</td> <td data-bbox="880 1139 2085 1378">                     The Noise and Vibration Management Plan would include the following details in relation to the project within the relevant local authority area:                     <ul style="list-style-type: none"> <li>• description of works pursuant to DCO;</li> <li>• scheme of work;</li> </ul> </td> </tr> </tbody> </table>	Reference	Commitment	G102	Noise and vibration would be managed by processes and measures laid out in the CEMP. This would include to adopt BPM for the control of noise and vibration across the project.	G100	The Noise and Vibration Management Plan would include the following details in relation to the project within the relevant local authority area: <ul style="list-style-type: none"> <li>• description of works pursuant to DCO;</li> <li>• scheme of work;</li> </ul>
Reference	Commitment							
G102	Noise and vibration would be managed by processes and measures laid out in the CEMP. This would include to adopt BPM for the control of noise and vibration across the project.							
G100	The Noise and Vibration Management Plan would include the following details in relation to the project within the relevant local authority area: <ul style="list-style-type: none"> <li>• description of works pursuant to DCO;</li> <li>• scheme of work;</li> </ul>							



ExQ2	Question:	Applicant response to Question:	
	<p>reduced to 08:00-18:00, it is noted that start up and shut down activities for an hour either side of these times is still proposed. Confirm whether:</p> <p>i) Deliveries would occur during the start-up/shut-down activities.</p> <p>ii) What mechanisms are proposed to ensure that these activities are low noise generating activities and that plant and machinery are not operated in these periods as stated in your response.</p> <p>iii) Explain what is meant by “reasonably necessary on an exceptional basis”.</p>		<ul style="list-style-type: none"> <li>• programme;</li> <li>• working hours;</li> <li>• plant noise and vibration data;</li> <li>• receptors at risk of &gt;1.0mm/s peak particle velocity and a protocol for providing prior warning and explanation;</li> <li>• best practicable means (BPM) measures where applicable (as defined in Section 72 of CoPA 1974 for the control of noise and vibration);</li> <li>• predicted noise and vibration levels; and</li> <li>• BPM justification for short term higher noise/vibration levels or out of hours working and community communication details.</li> </ul>
		G102	Noise and vibration would be managed by processes and measures laid out in the CEMP. This would include to adopt BPM for the control of noise and vibration across the project.
		G104	Before works commence, the site workforce would be fully briefed on the need to keep all noise generated to a low level. Shouting and raised voices would not be permitted other than in cases where warnings of danger must be given. No personal radios on site.
		G108	Audible vehicle reversing sirens would be set to as low a setting as is compatible with safety requirements where possible.



ExQ2	Question:	Applicant response to Question:	
		G109	Noise implications would be considered when planning activities such as deliveries of pipe and bulk materials.
		1.3	The Applicant has proposed drafting in the DCO submitted at Deadline 4 to confirm that the start-up and shut down activities must be in accordance with the requirements of the CEMP.
		1.4	In response to (iii), The Applicant response in relation to “reasonably necessary on an exceptional basis”. Such exceptional basis, could be works undertaken during the works to pull back a HDD pipe string – these works may exceed the working hours due to the nature of the works involve will HDD. In addition, the final NVMP(s) will set out the BPM justification for short-term higher noise/vibration levels or out-of-hours working and community communication details in accordance with commitment G100.
DCO.2.26	<b>Explain the term “once the pipeline works have been commissioned” and whether this is adequately defined in the dDCO [REP3-006].</b>	1.1	The Applicant does not consider that the word ‘commissioned’ needs to be defined as it has its ordinary meaning of being tested and prepared for use. “Commissioned” is also well understood in the context of pipeline operations and is a distinct stage set out in BSI Standards Publication: Pipeline systems – Part 1: Steel pipelines on land (PD 8010-1:2015+A1:2016). The term is already used elsewhere in the dDCO, e.g. at requirement 14(3)(e). The Applicant wishes to avoid referring to the pipeline being brought into use because testing it and preparing it could be considered to be ‘using’ it. Alternatively, the phrase ‘brought into commercial operation’ could be used.





ExQ2	Question:	Applicant response to Question:
<p><b>DCO.2.29</b></p>	<p><b>Requirement 20 refers to 'business days' which is defined in the dDCO [REP3-006]. Requirements 18, 19, 21 and 22 simply refer to 'days', which are undefined.</b></p> <p><b>Clarify whether 'days' refers to calendar, working or business days and if necessary, amend either the dDCO [REP3-006] to provide a definition of 'days'. Check elsewhere in the dDCO for use of this term and correct.</b></p>	<p>1.1 The reference to “business days” in Requirement 23 (previously Requirement 20) but not in other Requirements is deliberate and based on precedent (see for example Requirement 1 of Schedule 3 to the National Grid (Richborough Connection Order) 2017). The rationale for using “business days” in Requirement 23 is that the time periods involved (2 or 5 days) are short, so the Applicant considers that it would be unreasonable for time to be counted on anything other than business days. The exception is the reference to “21 business days” in Requirement 23(3) which was an error and has now been corrected in the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1 (5)</b>).</p> <p>1.2 The reference to “days”, which is used extensively throughout the draft DCO, means calendar days. The Applicant has not defined that term, which reflects the approach taken in the vast majority, if not all, made Development Consent Orders. The Applicant considers that the position is clear, since the term “working days” or “business days” would have been used if an alternative meaning were intended. No use of the term “working days” is made in the draft DCO.</p>



ExQ2	Question:	Applicant response to Question:
DCO.2.30	<p>In their D3 response [REP3-061] SDNPA request that all above ground infrastructure (such as flight and pipeline markers) be removed in the event that the pipeline ceases operation. Explain whether there is any legal requirement for these markers to remain in place once a pipeline ceases operation and if not how long a period would be reasonable for their removal.</p>	<p>1.1 Once the existing pipeline section that is being replaced has been abandoned there will be no requirement to maintain the existing pipeline marker posts and they can be removed. As per paragraph 14.1 of BSI Code of practice: Pipeline systems – Part 1: Steel pipelines on land (PD 8010-1:2015+A1:2016) “all above-ground sections of the pipeline system should be removed to not less than 900 mm below ground level.”</p> <p>1.2 Removal of pipeline markers could be achieved within 6 months of abandonment of the pipeline however, depending on seasonal constraints, a reasonable period in which to do this would be within 1 year of abandonment.</p> <p>1.3 Where the Applicant’s existing pipelines are routed alongside each other, one aerial marker post normally marks both pipelines. Therefore, in most cases these aerial marker posts will be retained. However, where the existing aviation fuel pipeline follows a different routing any aerial marker posts could also be removed as well as the pipeline marker posts in these sections.</p> <p>1.4 All other above ground infrastructure (valves and cathodic protection apparatus) are within or service the Applicant's other existing pipeline and will be retained.</p>
DCO.2.32	<p>Clarify whether reference to “A327 – Ively Road” should in fact read “Old Ively Road”.</p>	<p>1.1 The reference to the A327 – Ively Road in schedule 4 of the draft DCO to be submitted at Deadline 4 (<b>Document Reference 3.1(5)</b>) is correct. Old Ively Road, which is also listed in schedule 4, is a different road located to the west of Cody Technology Park.</p>



ExQ2	Question:	Applicant response to Question:
DCO.2.33	<p>Balmoral Drive is listed in this Schedule of streets where no diversion to be provided. However, the Transport Assessment [APP-135] has assessed a required diversion route to this road. Explain this anomaly.</p>	<p>1.1 During early engagement with Surrey County Council (SCC) highway department, SCC indicated that its preference would be for Balmoral Drive to be temporarily closed and for traffic to be temporarily diverted for the duration of that closure, as opposed to managing traffic along the Drive, during construction. It was on this basis that the Transport Assessment (Application Document <a href="#">APP-135</a>) assessed a diversion to this Drive.</p> <p>1.2 However, following further technical appraisal, the Applicant considers that traffic is capable of being managed along Balmoral Drive, using temporary traffic signals, and that no temporary closure would be required. The Applicant has therefore included Balmoral Drive in the list of streets for which no diversion is to be provided in Part 2 of Schedule 5 of the draft DCO (<b>Document Reference 3.1(5)</b>).</p> <p>1.3 In the unlikely event that the temporary closure of Balmoral Drive were required, or SCC were to insist that this approach should be taken, the Applicant would seek to agree upon a suitable temporary diversion for traffic along Balmoral Drive with SCC.</p>
DCO.2.34	<p>Clarify the following when compared with Schedule 4 street names:</p> <p>i) Winchester Road – Winchester City Council in its LIR [REP01-026] in paragraph 8.5 state that this will be done with traffic light control. Explain whether</p>	<p>1.1 In response to i), the Applicant can confirm that Winchester Road is proposed to be constructed under traffic light control. Since the Applicant would be authorised to impose restrictions over the streets listed in Part 2 of Schedule 5, it is considered appropriate that Winchester Road is included in this Schedule.</p> <p>1.2 In response to ii), the Applicant can confirm that the road name should read as “Wheely Down Farm Lane” and this has been corrected in the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1 (5)</b>).</p> <p>1.3 In response to iii), the Applicant can confirm that the road name should read as “Selborne Road” and this has been corrected in the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1 (5)</b>).</p>



ExQ2	Question:	Applicant response to Question:
	<p><b>Winchester Road should be in this Schedule.</b></p> <p><b>ii) Wheely Down Road – clarify whether this should read as “Wheely Down Farm Lane”.</b></p> <p><b>iii) Selbourne Road – clarify whether this should read as “Selborne Road”</b></p> <p><b>iv) Binstead road – clarify whether this should read as “Binsted Road”.</b></p> <p><b>v) Ryebidge Lane – clarify whether this is “Unnamed Road between A31 and Ryebidge Lane”?</b></p>	<p>1.4 In response to iv), the Applicant can confirm that the road name should read as “Binsted Road” and this has been corrected in the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1 (5)</b>).</p> <p>1.5 In response to v), the Applicant can confirm that the road is the “Unnamed Road between A31 and Ryebidge Lane and this reference has therefore been corrected in the revised draft DCO submitted at Deadline 4 (<b>Document Reference 3.1 (5)</b>).</p>
DCO.2.35	<p><b>The ExA considers the following should be added to the certified documents at Schedule 11:</b></p>	<p>1.1 The Applicant does not consider that these documents should be added to the list of certified documents in Schedule 11.</p> <p>1.2 The documents and plans listed in Schedule 11 are those which control the way in which the authorised development may be carried out, or moderate the exercise of the powers conferred by the draft DCO (<b>Document Reference 3.1 (5)</b>), such as the Land Plans (<b>Additional Submissions</b></p>



ExQ2	Question:	Applicant response to Question:
	<p><input type="checkbox"/> The Navigation Document (latest [REP3-002]; and</p> <p><input type="checkbox"/> The Alignment Sheets (narrow working) [REP3-023], [REP3-024] and [REP3-025].</p> <p>Provide a response and alter the next dDCO for D4.</p>	<p><a href="#">AS-042</a> to <a href="#">AS-045</a>) and Works Plans (Additional Submissions <a href="#">AS-046</a> to <a href="#">AS-048</a>), the Code of Construction Practice (<b>Document Reference 6.4 Appendix 16.1 (3)</b>) and the Archaeological Mitigation Strategy (<b>Document Reference 6.4 Appendix 9.5 (3)</b>). The Applicant has also included in Schedule 11 those documents which may be relied upon by discharging authorities when determining applications for approval under the Requirements in Schedule 2 of the draft DCO. The outline plans (such as the Construction Environmental Management Plan and Construction Traffic Management Plan) fall into that category, since a local authority would rely upon those documents in considering an application for approval of the final document, which would need to incorporate any mitigation measures contained in the outline document.</p> <p>1.3 The Navigation Document (<b>Document Reference 1.5 (5)</b>) does not perform any of these functions. Its purpose is instead to provide ‘<i>an accessible guide to the project</i>’ and to ‘<i>assist those in reviewing the application documents</i>’ (para 1.1.2). It does not control or moderate the exercise of the draft DCO powers but refers to those documents and plans which do and to other documents submitted during the examination but which are not proposed to be certified (for example, statements of common ground and responses to the Examining Authority’s written questions).</p> <p>1.4 The Applicant has not been able to identify an instance where such a document has been certified by the Secretary of State. The Applicant has identified that a similar document (“<i>Guide to the Application</i>”) was submitted to the Planning Inspectorate by National Grid as part of the National Grid (Richborough Connection Project) Order 2017 and is cited by the Planning Inspectorate as a good example of documentation submitted in relation to Nationally Significant Infrastructure Projects. Notably, however, that document was not certified by the Secretary of State.</p> <p>1.5 As regards the Alignment Sheets (narrow working) (<a href="#">REP3-023</a>, <a href="#">REP3-024</a>, <a href="#">REP3-025</a>), these drawings were submitted at Deadline 3 to present a provisional alignment of the pipeline in areas of narrow working along the route. They are not, and were not intended to be, a definitive</p>



ExQ2	Question:	Applicant response to Question:
		<p>illustration of the final route alignment. The Applicant is not required under the draft DCO or otherwise to lay the pipe along this provisional alignment.</p> <p>1.6 The Applicant maintains that a power to lay the pipeline anywhere within the limits of deviation must be preserved notwithstanding the provisional alignment shown on these drawings (subject to complying with any narrow working area commitments contained in the Code of Construction Practice (<b>Document Reference 6.4 Appendix 16.1 (3)</b>), in the event that ground conditions or the presence of other infrastructure in that location mean that this provisional alignment cannot be achieved. The Applicant is seeking appropriate powers under the draft DCO (<b>Document Reference 3.1 (5)</b>) to respond to this issue. As noted, the provisional alignment shown on the Alignment Sheets does not fetter those powers. In those circumstances, the Applicant does not consider that it is necessary to include them in Schedule 11.</p>